

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
June 26, 2014

Meeting called to order at 6:07 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis, Susan Tuveson, Bob Melanson, Mark Alesse

Members absent: Ann Grinnell (8:30 p.m.)

Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes: June 12, 2014

Ms. Tuveson moved to accept the minutes of June 12, 2014 as amended

Mr. Melanson seconded

Motion carried; 5 in favor; 1 abstain (Alesse); 0 opposed.

Ms. Kalmar moved to accept the June 5, 2014 minutes of the site walk for 15 Old Armory Way as amended

Mr. Melanson seconded

Motion carried; 5 in favor; 1 abstain (Emerson); 0 against

Public Comment: No public comment.

PUBLIC HEARING

ITEM 1 –Town Code Amendment - Title 16.10.8.2.1 Conditions – General

Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Proposed amendment adds off-site improvements to potential Planning Board conditions of approval.

Mr. Mylroie: Need to clarify that when a property under development impacts adjacent ROW property, the Board may require installation of capital improvements.

Ms. Driscoll-Davis: As this reads, this amendment is only for projects before the Board. What if there's a project involving a private right of way? An agreement between owner and developer would be needed. This is confusing, as the Board has always been able to require off site improvements of a developer. If this amendment is intended to require improvements for projects not before the Board, this language is in the wrong place.

Ms. Mylroie: If there is a project that is not coming before the Board (i.e. creating less than 6 new parking spaces), these improvements may still be required.

Mr. Emerson: This amendment is proposed under Board conditions of approval only.

Mr. Melanson: If the ROW owner does not agree, it's a no-go. In conjunction with Title 16.11, the Board needs to work in conjunction with the Port Authority.

Ms. Tuveson: Can the ROW owner demand more improvements?

Discussion followed regarding ROW owner scenarios.

Mr. Mylroie: The Code office was looking for clarification where the Board can require adjacent ROW improvements, such as street trees.

Ms. Kalmar: This is reasonable to permit the Board to require improvements, though the language does not extend outside of Board review.

The Public Hearing opened and closed at 6:45 p.m. with no testimony.

Ms. Kalmar: Noted mis-numbered code sections (16.10.8) and incorrect title on enactment page, and miscellaneous grammatical changes.

Mr. Melanson moved to continue review of this amendment when corrected

Ms. Kalmar seconded

Mr. Mylroie: This will not go to the Council at the next workshop.

Motion carried unanimously by all members present

OLD BUSINESS

ITEM 2 – Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval.

Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

Mr. Mylroie: Following subcommittee review, changes have been made per requests.

Ms. Kalmar moved to approve for discussion

Mr. Melanon seconded

Ms. Kalmar: Reviewed staff recommendations and substitute 'expires when' for 'will expire if' (lines 36 and 42-43); in the Enactment Ordinance, amend to read "...pertaining to the expiration of development plan and wetlands alteration approval." (line 76)

Ms. Kalmar withdrew her motion

Mr. Melanson seconded

Ms. Kalmar moved to approve amendments to Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval as amended June 26, 2014.

Mr. Melanson seconded

Motion carried unanimously by all members present

ITEM 3 –Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code. Action: review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

Mr. DiMatteo: The state has not had a final review of the proposed amendment and may have additional changes.

Ms. Driscoll-Davis: Questioned language regarding parking 'integrated into the building' and whether a garage can be used for storage. Ms. Kalmar: Change language to 'encompassed within' (line 102 and line 110). Mr. DiMatteo: The intent is to decrease the footprint. Discussion followed regarding the mixed-use and residential components.

Spelling and grammatical changes:

Line 108 (Overelay should be overlay); Line 370 ('it' should be 'if');

Ms. Tuveson moved to approve with changes to Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings as amended June 26 2014 and forward to the state.

Ms. Kalmar seconded

Motion carried unanimously by all members present

Mr. Mylroie: Any changes made by the MDEP will be brought back to the Board. This amendment will go to Council workshop.

ITEM 4 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code. Action: review amendment and make recommendation to Town Council. Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

Ms. Tuveson: Changes:

Line 152: add hyphen to 'less-irregular'

Line 153: add commas to separate, "...appropriate placement of, or access to, utilities and structures..."

Line 9: remove 'square'

Ms. Driscoll Davis moved to approve amendments to Title 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines presented as amended June 26, 2014.

Ms. Tuveson seconded

Motion carried unanimously by all members present

ITEM 5 – Town Code Amendment - Title 16.8.10.1 Signs – Purpose and Title 16.8.10.2 Signs – General Requirements. Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment requires adherence to Kittery Design Handbook.

Mr. Mylroie: This amendment focuses on providing clarity regarding Title 16 signage language and relationship with Design Handbook guidelines. There is Council interest in reviewing LED lighting as used in signs and electronic message boards. The CEO does not have code-specific language for review relating to New England character in sign design. This is relative to the frame of the sign, not the lettering.

Mr. Emerson: There should be an appeal process to the Board if an applicant feels a sign design meets the code. Where do you draw the line with electronic message boards? It's may not be just for gasoline prices. Ms. Tuveson: New England character is amorphous and restrictive. Signage representing a business may be more attractive than a picture-frame design. Ms. Driscoll Davis: Who changes the Design Handbook? What happens to the LED signs already in place? Can they be shut off at a particular time. The sign ordinance needs to be workshopped by residents and business owners as well. Mr. Mylroie: The Handbook would be amended by the Board to be in compliance Code and vice-versa. Mr. Emerson: Kittery represents more than New England character, including it's naval and industrial heritage. Discussion followed regarding LED lights and message boards; gas stations vs. other business use; height of LED signage.

A workshop on the sign ordinance was scheduled for July 17, 2014 at 6:00 p.m.: Planning office will invite the Economic Development Committee, post in newspaper and on the web site.

Mr. Emerson: The Economic Development Committee will be a conduit to business owners.

Ms. Tuveson: The sign ordinance needs to be made understandable. Mr. Mylroie: The workshop could also include review of the proposed changes to the sign ordinance in general.

No Board action taken.

Break

ITEM 6 - Town Code Amendment – Title 16.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions. Action: review amendments and schedule a public hearing, Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development standards.

Ms. Kalmar: The Ordinance Revision Memorandum will be shortened prior to the public hearing.

Revisions:

Article VII Sewage Disposal

Line 163: remove extra 'the'

Line 217: should be {modified and moved from 16.8.7.1.G, above}

Line 227: should read: "2. Where expansion of use is proposed..." delete 'no'

Line 265: re-work language regarding aquifer

Mr. Melanson: The proposed language regarding holding tanks addresses the the importance of protecting Kittery's waters. There are two other tanks at the Pepperrell Pier, one owned by the restaurant and one by the municipality.

Earldean Wells: The Conservation Commission feels revising a decision not to have additional holding tanks in the shoreland zone is a mistake and requests further thought as there are alternatives to holding tanks.

Discussion followed regarding tank inspection, monitoring, reporting, etc.

Line 286: re-number items 4 and 5 to 'a' and 'b'. Re-word language in 'b' to include specific holding tank inspection and reporting requirements per the state.

Line 294: include 'must', "Inspections must include a written report..."

Article XVI. Lots

Line 51: Add at end of part A: "(Moved and amended: 16.8.16.9.A)"

Line 98: Correction, should be: "16.8.16.2 above"

16.9 Soil Suitability:

Line 75: Correction: 'non-clustered....'

Line 76: Delecte 'subsection E.' and replace with '16.9.1.4.E'

Mr. Melanson moved to schedule a public hearing for Title 16.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions as amended on June 26, 2014.

Ms. Tuveson seconded

Motion carried unanimously by all members present

Ms. Grinnell joined the meeting at 8:30 p.m.

ITEM 7 – Board Member Items / Discussion

A. Action List; Update and eliminate duplication

Ms. Driscoll Davis: Asked about possible regulations regarding rental of boats for summer living. This could impact availability of parking, and contribute to noise around residential areas.

Mr. Melanson: There is nothing in the Port Authority regulations, but will look into this.

B. Committee Updates;

Code Committee: Additional amendments submitted by Mr. Mylroie:

- Shoreland Overlay - exempt areas beyond road from SLZ tree cutting provisions;
- Waive variance requirements for handicapped access in SLZ and allow approval by Code Officer;

- Exemption of public utilities from wetland setbacks.
- Allowance of public information signs in SLZ. Will be discussed in sign workshop.
- Shared parking reviewed by Planning Board instead of Board of Appeals. Ms. Driscoll-Davis asked about reduction of parking requirements in the Foreside where parking is a problem. Mr. Emerson: The library is leasing spaces to a private property owner, reducing availability of parking for taxpayers. Ms. Driscoll-Davis: Shouldn't this have been reviewed by the Board?

Port Authority

Mr. Melanson noted work by Prock Marine should be completed by mid-July. A re-design for inclusion of a ramp for fisherman's use will be reviewed by Baker Design Associates and the KPA. The July KPA meeting has been rescheduled to July 1. The Port Authority will comment at the July meeting on Shore and Harbor Plan to meet the July 14 deadline.

Economic Development Committee

Ms. Grinnell: Due to a time change and insufficient notice, there was no quorum for the Tuesday meeting. Requested individuals attend meetings so all concerns and interests can be heard.

Foreside: Transportation and Parking. Plan presented and discussed. Another meeting will be held to consider comments and suggestions. Awesome presentation by Steve Workman. Consider a parking garage be developed at the water district site.

Business Group: Felt the EDC was handling everything, but the Planning department needs more staff.

Comp Plan Update

Mr. Mylroie: Ongoing; draft to return to Committee for review. Meeting to be confirmed for July 2 followed by meeting on July 16.

Overlay Zones

Mr. Emerson: The Mall area is one zone; change the C-1 zone rather than establishing an overlay zone.
Ms. Tuveson: There could be an evolution in the area with e-commerce; discussed possible residential use and reduce parking by developing vertically.

C. Other:

Ms. Kalmar: Volunteered to serve on Spruce Creek Watershed Committee

ITEM 8 –Town Planner Items:

A. Town Code amendment related to Quality Improvement Overlay Zone; and B. Other
Items 8B and 10 will be moved to the scheduled workshop of July 17, 2014. No discussion.

Branding: Gateway to Kittery

Mr. Emerson: The Council has requested the Board take a position. Discussion followed regarding the limited attendance at the branding meetings where a name was chosen representing the Town. Mr.

Mylroie: Large mailings were sent to businesses and residents in the area; there was limited attendance, but the name was chosen by majority.

Ms. Grinnell moved that the Planning Board endorse changing the name 'Route One By-Pass' to 'Kittery Gateway'

Ms. Tuveson seconded

Motion failed: 3 in favor; 4 opposed; 0 abstaining

Workshop with Council:

Some amendments scheduled for public hearing on July 24. Others may not go to public hearing until late August or into September. No decision made.

Upcoming Board Reviews:

Comprehensive Plan Update; Shore and Harbor Plan; Economic Development Plan; FY 2015 Capital Improvement Projects

Mr. Emerson: Public hearings need to be held for each of these plans before they are submitted to Council for review.

Mr. Mylroie: An applicant has asked for Board feedback on a cluster subdivision sketch plan.

Mr. DiMatteo: This would be a workshop, with no action by the Board. Ms. Tuveson: There is a process. Mr. Emerson: There is a lot required for a cluster sketch plan at great expense to the applicant and, once done, they don't want to have to re-design at additional cost. However, some survey information is needed before it could even be workshopped. If they have topo and wetland information with the sketch plan, it would be a start. Mr. DiMatteo: So the applicant could anticipate multiple sketch-plan meetings not to exceed 90 days.

NEW BUSINESS

ITEM 9 – Annual municipal update of the Spruce Creek Watershed Improvement Project.

As part of the 319 Clean Water Act grant requirements the Town of Kittery will update municipal staff annually on the progress of the Spruce Creek Watershed Improvement Project (SCWIP) currently in Phase III. Agent Emily DiFranco, Project Manager, FB Environmental Associates.

Emily DiFranco: Goal is to update Board regarding improvement of the Spruce Creek Watershed. Considered impaired by State of Maine, some of this area remains unsafe for shellfishing and swimming in due to high bacteria counts:

1. Beds closed since 2005; on state impairment list
2. Threats to clean water, including runoff, old sewer infrastructure, outfalls, failed septic systems.
3. Water sampling identified outfall problem areas, resulting in mapping; tracking 'hotspots' and follow-up.
4. Found unknown catch basins; developed baseline data for the Creek; developed education and outreach efforts; follow-up with public works and code enforcement.
5. 319 Grant funds of \$225,300 with a town match (primarily in-kind services) of \$322,118.
6. Developing methods of stormwater runoff capture (raingarden, buffers, etc); providing education; testing wastewater system.
7. Update of Spruce Creek Watershed-Based Management Plan for 2014, includes goals, action items, and accomplishments.
8. Future and ongoing work: Water quality sampling projects; continue work on DEP grant; apply for Phase 4 grant; meet with Dept. of Marine Resources to consider opening of limited shellfish harvesting.

Main Channel data is collected by DMR, but some of the tributaries and outfalls have shown a significant drop in bacteria.

Ms. Kalmar: How and when will the Planning Board be briefed on their action items as listed?

Ms. DiFranco: There is a steering committee for the grant, and a representative from the Board or a point of contact on the Board would be welcome.

ITEM 10 – Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements. Action: review amendment and schedule a public hearing. Proposed amendment allows for the limited use of Light-emitting diode (LED) lights in

No discussion. Moved to July 17 workshop.

Mr. DiMatteo: Requested that a workshop with Council on the Soil Suitability amendment be scheduled in August as it impacts policy. Following discussion, it was anticipated a workshop with Council could be held on August 21. No action taken.

Mr. Alesse moved to adjourn
Ms. Driscoll Davis seconded
Motion carried unanimously

The Kittery Planning Board meeting of June 26, 2014 adjourned at 9:22 p.m.
Submitted by Jan Fisk, Recorder, June 30, 2014